



United States Department of the Interior

OFFICE OF THE SOLICITOR
Washington, D.C. 20240



IN REPLY REFER TO:

MAR 2 2000

Kevin K. Washburn, Esq.
General Counsel
National Indian Gaming Commission
1441 L Street, N.W., 9th Floor
Washington, D.C. 20005

Dear Mr. Washburn:

Your office requested a legal opinion regarding whether fee land in California purchased by the Picayune Tribe in 1996, which is within the boundaries of the Picayune Rancheria, falls within the definition of "Indian lands" under the Indian Gaming Regulatory Act ("IGRA"), 25 U.S.C. §§ 2701-21 (1988). We conclude that the lands are "Indian lands" and therefore may be used for Indian gaming operations on the property.

Background

In 1983, the United States agreed to settle litigation that challenged the purported termination of seventeen California Rancherias. See, Tillie Hardwick et al. v. United States, Civil No. C-79-1910-SW (N.D. Cal. 1983) ("Hardwick I") (unpublished) (on file in our office).

In Hardwick I, the United States agreed that the individual members of the Rancherias would be restored to their status as Indians and that the U.S. would recognize the Indian Tribes, Bands, Communities or groups of the seventeen Rancherias as Indian entities with the same status as they possessed prior to distribution of these Rancherias.

Hardwick I did not determine whether or to what extent the boundaries of the seventeen Rancherias were restored. Id. at 4. The district court reached that determination for Picayune Rancheria in 1987, stating that: "the original boundaries of the [Picayune Rancheria] . . . are hereby restored, and all land within these restored boundaries of the . . . Picayune Rancherias are declared to be 'Indian Country.'" (Emphasis in original.) The court also held that the Rancheria "shall be treated by the County of Madera and the United States of America, as any other federally recognized Indian Reservation." (Emphasis supplied.) See Tillie Hardwick et al. v. United States, Civil No. C-79-1910-SW, at 4 (N.D. Cal. June 16, 1987) ("Hardwick II") (unpublished) (on file with our office).

Indian Gaming Regulatory Act

The IGRA requires that any Indian gaming be conducted on "Indian lands." See, 25 U.S.C. § 2701(5). IGRA defines "Indian lands" as:

(A) all lands within the limits of any Indian reservation; and

(B) any lands title to which is either held in trust by the United States for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to restriction by the United States against alienation and over which an Indian tribe exercises governmental power.

25 U.S.C. § 2703(4).

Parcels 1 and 2, at issue in this opinion, meet the definition of subsection (A). It is well established that Rancherias are "for all practical purposes" reservations. Solicitor's Opinion, M-28958 (April 26, 1939), 1 Op. Sol. On Indian Affairs 891 (U.S.D.I. 1979); cf. Oklahoma Tax Commission v. Citizen Band of Potawatomi Indian Tribe, 498 U.S. 505, 511 (1991). When the district court ordered that the Rancherias be restored to Indian country "as they existed immediately prior to their purported termination under the Rancheria Act," the Picayune Rancheria returned to its status as an Indian reservation. See, Stipulation to Restoration of Indian Country and Order, Hardwick II. The parcels of land at issue are within the limits of the Rancheria boundaries as re-established by the district court's order. They are, thus, lands within the limits of an Indian reservation. The Pacific Region of the Bureau of Indian Affairs (BIA) sent us a report in July, 1999 that confirms that the land intended to be used for gaming is located within those boundaries. See, Report and Map, Attached.¹

While the United States, as co-defendant in Hardwick II, did not sign the 1987 stipulation because it concerned Madera County Government tax issues, the United States did sign the underlying stipulation that restored the Tribe in 1983. In that stipulation, the United States agreed and the Court held that it would not determine the boundaries of the Rancheria yet, but, "shall retain jurisdiction to resolve this issue in further proceedings herein." The stipulated judgment that plaintiff and defendant Madera County finalized in 1987, was one of the "further proceedings" anticipated by the 1983 stipulation. The 1987 stipulation also provides that the Rancheria, "shall be treated by . . . the United States of America as any other federally recognized

¹ The Regional Director report states that the Tribe had indicated at one point that the purchase of the land would be financed by First Astri Corp. The Tribal attorney subsequently advised us that the Tribe paid cash. Because the land is within the reservation boundary, and because the tribe has an ownership interest in the land, even if its purchase was financed and perhaps secured by a mortgage, we do not believe that the method of financing or purchasing of the land is material to our determination.

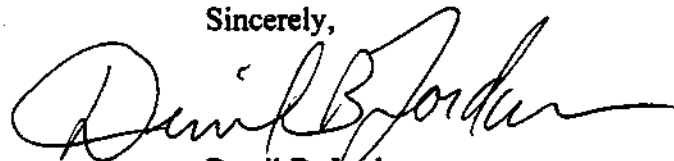
Indian reservation." For these reasons the United States considers itself bound by both stipulations.

The Tribe has fee title to the land at issue. An attorney representing the Tribe provided us title evidence in October, 1999, that substantiated ownership. See, Deed, Attached. Their property interest is described as a Grant Deed from the Estate of Hazel A. Kennedy, dated January 2, 1996. The Tribe's position is that they need not have the land taken into trust for gaming purposes because it is within their reservation.

The Tribe is correct that they need not have the land taken into trust. Subsection (A) defines Indian lands to include "all lands within the limits of any Indian reservation." It does not require that lands within the boundaries of a reservation be held in trust. By providing that "all lands" within a reservation are Indian lands, it is clear that Congress did not intend to include an additional requirement that the lands also be held in trust. Therefore, the land is "Indian lands" under IGRA and may be used if they are within the boundaries of a reservation for an Indian gaming facility.

If you have any questions on this matter, please contact me or my staff lawyer, John Jasper at (202) 208-5738.

Sincerely,

A handwritten signature in black ink, appearing to read "Derril B. Jordan", with a long horizontal flourish extending to the right.

Derril B. Jordan
Associate Solicitor
Division of Indian Affairs

Enclosures

memorandum

DATE: JUL - 2 1999

REPLY TO
ATTN OF: Regional Director, Pacific Region, Bureau of Indian Affairs, Sacramento

SUBJECT: Picayune Rancheria - Sec. 20 Determination - Indian Gaming Regulatory Act

TO: Office of the Solicitor - Division of Indian Affairs, Washington, D.C.
Attention: John Jasper

As you requested by telephone on June 15, 1999, we are hereby submitting data pertaining to the Picayune Rancheria that may assist you in making a determination as to whether or not the lands currently being utilized for gaming purposes meet the definition of "Indian lands" as set forth under Section 20 of the Indian Gaming Regulatory Act.

The records of this office reflect that as early as 1993, the Picayune Rancheria has discussed its intent to establish a gaming facility. In 1996, the Picayune Rancheria advised of its plans to establish a casino on nontrust lands located within the exterior boundaries of the Picayune Rancheria as reinstated pursuant to the 1987 Stipulation entered by Madera County in the U.S. District Court action entitled Tillie Hardwick, et al., v. U.S., et al., No. C-79-1910-SW.

In the said 1987 Stipulation, Madera County stipulated to the creation of "Indian Country" for all lands within the restored Rancheria boundaries. We have no record that the U.S. stipulated to the restoration of Picayune's boundaries or the creation of Indian Country in Hardwick as was accomplished for other rancherias located in Humboldt, Mendocino, Lake, Plumas and Tuolumne Counties. The Picayune Rancheria does not have any tribal trust lands at this time.

This office was also never provided with title evidence substantiating tribal ownership of the 19 acres (see attached location map) identified by Picayune for gaming purposes, and at one point, the Tribe indicated that their financing for the purchase of the lands was coming from First Astri Corporation. Accordingly, it may be necessary to seek additional information regarding tribal ownership to rancheria lands (the Tribe may have provided title data to the NIGC or to the Director, BIA Gaming).

To our knowledge, the Picayune Rancheria is operating under a non-IRA constitution that was adopted November 7, 1988.

Attached for your review are copies of the following:

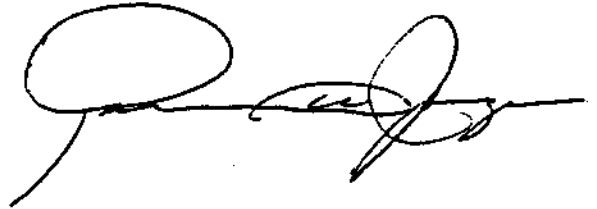
1. Order Approving Entry of Final Judgment in Action filed December 22, 1983 and Stipulation for Entry of Judgment in Hardwick.
2. Stipulation for Entry of Judgment (Madera County) in Hardwick.
3. Picayune Constitution adopted November 7, 1988.
4. Location Map for proposed casino site.

OPTIONAL FORM NO. 10
(REV. 1-94)

5010-116

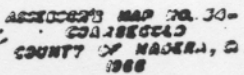
U.S. GPO: 1994-300-892/60210

**If you have any questions, please feel free to contact Carmen Facio, Area Realty Officer, at:
(916) 978-6062.**

A handwritten signature in black ink, appearing to read 'Carmen Facio', with a large loop at the end.

Attachments

cc: Superintendent, CCA w/o attachments



Oct-12-99 05:04P Monteau Peebles & Marks 402 333 4761

P.02

Recording Requested By:
First American Title Ins. Co.
Escrow No. 16635-LW

9600756

RECORDED IN
OFFICIAL RECORDS
MADERA COUNTY, CA

96 JAN 11 AM 8:00

FEE \$ 7.00

REBECCA MARTINEZ
COUNTY RECORDER

DOCUMENTARY TRANSFER TAX PAID 5.11

SPACE ABOVE THIS LINE FOR RECORDER'S USE

WHEN RECORDED MAIL TO:

Picayune Rancheria of
the Chukchansi Indians of California
P. O. Box 269
Coarsegold, CA 93614

MAIL TAX STATEMENTS TO:

same as above

AP #'s 054-330-036 & 037

DOCUMENTARY TRANSFER TAX \$298.00

☒ Computed on the consideration or value of property conveyed; OR
☐ Computed on the consideration or value less liens or encumbrances
remaining at time of sale.

The undersigned Grantor declares

Signature of Declarant or Agent determining tax - Firm Name

GRANT DEED

FOR A VALUABLE CONSIDERATION, receipt of which is hereby acknowledged.

Matthew Ray Ward, Executor of the Estate of Hazel A. Kennedy, formerly Hazel A. Cash, deceased

hereby GRANT(S) to

Picayune Rancheria of the Chukchansi Indians of California

the real property in the unincorporated area of the County of Madera, State of California, described as

Parcels 1 and 2 of Parcel Map 3244, filed for record in the Office of the Madera County Recorder, State of California, on February 28, 1994 in Volume 42 of Maps, at page 46, being a portion of the Northwest 1/4 of Section 29, Township 8 South, Range 21 East, Mount Diablo Base and Meridian.

Dated January 2 1996

Matthew Ray Ward
Matthew Ray Ward, Executor

STATE OF ~~California~~ *Montana*
COUNTY OF ~~Stanislaus~~ *Stillwater*

On *8th of January* 1996 before
me, *Clayton Landay*
personally appeared *Matthew Ray Ward*

personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s) or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

Clayton Landay
Commissionary Notary Public 15-23-77

OCT 7 1999